

# PROPOSED AMENDMENT

## HB 1025 # 5

### DIGEST

Alcoholic beverage wholesalers. Allows a person to have beer, wine, and liquor wholesaler's permits. (Current law allows a person to have wholesaler's permits for: (1) beer and wine; or (2) wine and liquor.) Allows a beer wholesaler to have more than one warehouse. Allows a small brewer and a beer wholesaler to extend credit on alcoholic beverages to a permittee. Repeals statutes regarding product transfer between beer wholesalers and distribution agreements between a beer wholesaler and a primary source of supply. Prohibits a distiller, brewer, rectifier, vintner, importer, or wholesaler from taking certain actions. Repeals a statute prohibiting a liquor wholesaler from having an interest in a beer permit. Makes conforming amendments.

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- 1           Page 1, between lines 13 and 14, begin a new paragraph and insert:  
2           "SECTION 2. IC 7.1-2-3-26, AS AMENDED BY P.L.86-2018,  
3           SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2024]: Sec. 26. The commission shall investigate a violation  
5           of a provision of ~~IC 7.1-3-3-17~~ and IC 7.1-5-5-9 and shall have the  
6           power to enforce conformance with a provision of an injunction issued  
7           under the authority of ~~these sections~~. **IC 7.1-5-5-9.**  
8           SECTION 3. IC 7.1-3-3-4, AS AMENDED BY P.L.11-2023,  
9           SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10          JULY 1, 2024]: Sec. 4. (a) The premises to be used as a warehouse by  
11          an applicant shall be described in the application for the permit. ~~The~~  
12          commission shall not issue a beer wholesaler's permit to an applicant  
13          for any other warehouse or premises than that described in the  
14          application. ~~The commission shall issue only one (1) beer wholesaler's~~  
15          permit to an applicant; but a permittee may be permitted to transfer the  
16          permittee's warehouse to another location within the county that is not  
17          required to be within the corporate limits of an incorporated city or  
18          town; upon application to; and approval of; the commission.  
19          (b) As used in this subsection, "immediate relative" means the  
20          father, the mother, a brother, a sister, a son, or a daughter of a  
21          wholesaler permittee. ~~Notwithstanding subsection (a);~~ If a wholesaler  
22          permittee is:  
23                  (1) dead;

(2) legally adjudged to be mentally incapacitated; or

(3) at least seventy-five (75) years of age and has held an interest in the wholesaler's permit for at least ten (10) years;

the commission may allow the transfer of the wholesaler permit only to an immediate relative of the wholesaler permittee who concurrently holds a majority share in a valid wholesaler permit. In the case of a permit transfer from a wholesaler permittee under subdivision (3), the immediate relative to whom the permit is transferred must concurrently hold a majority share in a valid wholesaler permit and must have held an interest in the wholesaler permit for at least ten (10) years.

SECTION 4. IC 7.1-3-3-17 IS REPEALED [EFFECTIVE JULY 1, 2024]. ~~Sec. 17. The circuit or superior court of the county in which the licensed premises of a beer wholesaler are located shall have jurisdiction to enjoin the cancellation or termination of a franchise or agreement between a beer wholesaler and a brewer in violation of IC 7.1-5-5-9. The action may be brought by a beer wholesaler or brewer who is or might be adversely affected by the cancellation or termination. The court, in granting an injunction under this section, shall provide that the brewer shall not supply the customers or territory of the beer wholesaler through servicing the customers or territory through another beer wholesaler or by any other means while the injunction is in effect. An injunction issued under this section shall require the posting of proper bond against damages for an injunction improvidently granted and a showing that the danger of irrevocable loss or damage is immediate. The beer wholesaler shall continue to service the accounts of the brewer in good faith during the term of the injunction.~~

SECTION 5. IC 7.1-3-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 19. The commission may ~~not~~ issue a beer wholesaler's permit to a person who holds:

(1) a wine wholesaler's permit; ~~and~~

(2) a liquor wholesaler's permit; ~~or~~

**(3) a wine wholesaler's permit and a liquor wholesaler's permit.**

SECTION 6. IC 7.1-3-8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 1.5. The commission may issue a liquor wholesaler's permit to a person who holds:**

**(1) a beer wholesaler's permit;**

**(2) a wine wholesaler's permit; or**

**(3) a beer wholesaler's permit and a wine wholesaler's permit.**

SECTION 7. IC 7.1-3-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. (a) The commission may issue a wine wholesaler's permit to sell wine, or wine and brandy, at wholesale to a person who:

(1) ~~notwithstanding IC 7.1-5-9-4,~~ holds a beer wholesaler's permit;

(2) holds a liquor wholesaler's permit; ~~or~~

**(3) holds a beer wholesaler's permit and a liquor wholesaler's permit; or**

~~(3)~~ **(4)** does not hold an alcoholic beverage wholesaler's permit, but meets the qualifications to hold either a beer or a liquor wholesaler's permit.

(b) The holder of a wine wholesaler's permit under subsection (a)(1), ~~or~~ (a)(2), **or (a)(3):**

(1) is considered the same as a person who holds a wine wholesaler's permit under subsection ~~(a)(3)~~ **(a)(4)** for purposes of conducting activities and operations under the wine wholesaler's permit; and

(2) may operate the beer or liquor wholesale business independently of the wine wholesale business."

Page 2, delete lines 40 through 42, begin a new paragraph and insert:

"(c) Nothing in this section allows a wine wholesaler to sell, give, purchase, transport, or export:

**(1) beer, (as defined in IC 7.1-1-3-6) unless the wine wholesaler also holds a beer wholesaler's permit under IC 7.1-3-3-1; or**

**(2) liquor, unless the wine wholesaler also holds a liquor wholesaler's permit under IC 7.1-3-8-1."**

Page 3, delete line 1.

Page 3, after line 15, begin a new paragraph and insert:

"SECTION 9. IC 7.1-3-23-23, AS AMENDED BY P.L.79-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 23. (a) This section applies to a brewer that manufactures, in aggregate, more than ninety thousand (90,000) barrels of beer in a calendar year for sale or distribution within Indiana.

(b) The commission shall revoke the permit of a brewer ~~or beer wholesaler~~ who holds an interest in another permit in violation of IC 7.1-5-9-3.

SECTION 10. IC 7.1-3-23-24 IS REPEALED [EFFECTIVE JULY

1, 2024]. Sec. 24. The commission shall revoke the permit of a liquor wholesaler who holds an interest in another permit in violation of IC 7.1-5-9-6.

SECTION 11. IC 7.1-3-23-28 IS REPEALED [EFFECTIVE JULY 1, 2024]. Sec. 28. The commission may suspend or revoke the permit of a permittee if the court finds that the permittee has violated any of the provisions of an injunction issued by it under the provisions of IC 7.1-3-3-17.

SECTION 12. IC 7.1-3-25 IS REPEALED [EFFECTIVE JULY 1, 2024]. (Product Transfer Between Wholesalers).

SECTION 13. IC 7.1-3-25.5 IS REPEALED [EFFECTIVE JULY 1, 2024]. (Distribution Agreements Between a Beer Wholesaler and a Primary Source of Supply).

SECTION 14. IC 7.1-5-5-9, AS AMENDED BY P.L.139-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

~~(c) This subsection does not apply to the cancellation or termination of an agreement under IC 7.1-3-25.5-4. It is unlawful for a beer wholesaler or a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.~~

~~(d) (c) A person who knowingly or intentionally violates subsection (b) or (c) this section~~ commits a Class B misdemeanor.

SECTION 15. IC 7.1-5-5-14 IS ADDED TO THE INDIANA CODE AS NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 14. (a) As used in this section, "alcoholic beverage" means liquor, wine, beer, or malt beverages.

(b) As used in this section, "seller" means:

(1) a distiller, brewer, rectifier, vintner, or other producer; or

(2) an importer or wholesaler;

of alcoholic beverages.

(c) It is unlawful for a seller to do any of the following directly or indirectly through an affiliate:

(1) Require a permittee that is authorized to purchase

alcoholic beverages:

(A) at retail from a seller; and

(B) intended for resale;

to purchase alcoholic beverages only from the seller in a manner that wholly or partially prohibits the permittee from purchasing alcoholic beverages sold or offered for sale by other sellers.

(2) Induce a permittee that is engaged in the retail sale of alcoholic beverages to purchase alcoholic beverages from a seller:

(A) in a manner that wholly or partially prohibits the permittee from purchasing alcoholic beverages sold or offered for sale by other sellers; and

(B) by requiring the purchaser to take and dispose of a certain quantity or quota of alcoholic beverages from the seller.

(3) Restrict, by agreement or otherwise, the sale or resale of alcoholic beverages to a given geographical area. This subdivision does not prohibit the designation of an area of primary responsibility. However, an effort to restrict sales to only the designated area of primary responsibility is prohibited.

SECTION 16. IC 7.1-5-9-3, AS AMENDED BY P.L.79-2015, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) This section applies to a brewer that manufactures, in aggregate, more than ninety thousand (90,000) barrels of beer in a calendar year for sale or distribution within Indiana.

(b) It is unlawful for the holder of a brewer's ~~or beer wholesaler's~~ permit to have an interest in a liquor permit of any type under this title.

(c) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 17. IC 7.1-5-9-4, AS AMENDED BY P.L.159-2014, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) ~~Except as provided in IC 7.1-3-3-4,~~ An applicant for a beer wholesaler's permit shall have no interest in the following:

(1) A permit to manufacture or to sell at retail alcoholic beverages of any kind.

~~(2) Any other permit to wholesale alcoholic beverages.~~

~~(3)~~ (2) Through stock ownership or otherwise, a partnership,

limited liability company, or corporation that holds ~~(A)~~ a permit to manufacture or to sell at retail alcoholic beverages of any kind. ~~or (B) any other permit to wholesale alcoholic beverages of any kind.~~

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 18. IC 7.1-5-9-6 IS REPEALED [EFFECTIVE JULY 1, 2024]. ~~Sec. 6: (a) It is unlawful for the holder of a liquor wholesaler's permit to have an interest in a beer permit of any type under this title.~~

~~(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.~~

SECTION 19. IC 7.1-5-10-12, AS AMENDED BY P.L.194-2021, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 12. (a) Except as provided in subsections (b) through (d) and subsection (g), it is unlawful for a permittee to sell, offer to sell, purchase or receive, an alcoholic beverage for anything other than cash. A permittee who extends credit in violation of this section shall have no right of action on the claim.

(b) A permittee may credit to a purchaser the actual price charged for a package or an original container returned by the original purchaser as a credit on a sale and refund to a purchaser the amount paid by the purchaser for a container, or as a deposit on a container, if it is returned to the permittee.

(c) A manufacturer may extend usual and customary credit for alcoholic beverages sold to a customer who maintains a place of business outside this state when the alcoholic beverages are actually shipped to a point outside this state.

(d) An artisan distiller, a distiller, a farm winery, **a brewery described in IC 7.1-3-2-7(5), and a beer,** or a liquor, or wine wholesaler may extend credit on liquor, **beer,** flavored malt beverages, and wine sold to a permittee for a period of fifteen (15) days from the date of invoice, date of invoice included. However, if the fifteen (15) day period passes without payment in full, the:

(1) wholesaler;

**(2) brewery that sells and delivers under IC 7.1-3-2-7(5)(A);**

~~(2)~~ **(3)** farm winery that sells and delivers under IC 7.1-3-12-5(a)(14); or

~~(3)~~ **(4)** artisan distillery that sells and delivers under IC 7.1-3-27-8(a)(11);

shall sell to that permittee on a cash on delivery basis only.

1 (e) A person who knowingly or intentionally violates this section  
2 commits a Class B misdemeanor.

3 (f) Nothing in this section may be construed to prohibit a hotel,  
4 restaurant, caterer, or a club that is not open to the general public from  
5 extending credit to a consumer purchasing alcohol for personal use at  
6 any time.

7 (g) Nothing in this section may be construed to prohibit a retailer or  
8 dealer from accepting a:

9 (1) credit card;

10 (2) debit card;

11 (3) charge card; or

12 (4) stored value card;

13 from a consumer purchasing alcohol for personal use.

14 SECTION 20. IC 35-52-7-54 IS REPEALED [EFFECTIVE JULY  
15 1, 2024]. ~~Sec. 54. IC 7.1-5-9-6 defines a crime concerning interests."~~

16 Renumber all SECTIONS consecutively.

(Reference is to HB 1025 as introduced.)